

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
vs.
RAYMO MORALES-DELGADO,
Defendant.

4:23-cr-40079-KES

DEFENDANT'S MOTION TO
DISMISS INDICTMENT

Defendant, Raymo Morales-Delgado, moves to dismiss the indictment because this case and the other case against Mr. Morales-Delgado, 4:20-cr-40055-KES, each charge the same illegal reentry offense, resulting in multiplicity. Fed. Rule Crim. Pro. 12(b)(3)(B)(ii).

The crime of illegal reentry, in violation of 8 U.S.C. § 1326(a), penalizes “any alien who has been . . . deported, or removed” and who later “enters, attempts to enter, or is at any time found in, the United States.” The offense “begins on the date of reentry” into the United States and “is an ongoing offense that continues until a person is discovered by authorities.” *United States v. Delgado-Hernandez*, 646 F.3d 562, 567 (8th Cir. 2011) (internal quotations and citations omitted) (cleaned up).

Illegal reentry is thus an ongoing offense that begins on the date a person reenters the United States after removal or deportation.

The two indictments against Mr. Morales-Delgado charge a single, identical crime: that Mr. Morales-Delgado was found in the United States following his

deportation on March 22, 2013, at Brownsville, Texas. *See* Docket 4, 4:20-cr-40055-KES; Docket 1, 4:23-cr-40079-KES. While the dates Mr. Morales-Delgado is alleged to have been found in the United States differs between the indictments, the offense is the same alleged illegal reentry offense that commenced when Mr. Morales-Delgado returned to the United States following the alleged 2013 deportation. The two indictments thus charge an identical crime and are multiplicitous. *See United States v. Chippes*, 410 F.3d 438, 447-48 (8th Cir. 2005).

Dismissal before trial is the appropriate remedy here, because the government does not seek to proceed on alternate theories of prosecution at trial but appears to have filed the 2023 indictment to remedy a potential speedy-trial issue in the 2020 case. Because the two indictments charge the same offense, the counts against Mr. Morales-Delgado are multiplicitous and Mr. Morales-Delgado asks the Court to dismiss this indictment against him.

Dated this 19th day of July 2023.

Respectfully submitted,

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